

EXHIBIT 1

INTRODUCTION

Respondents are Raymond N. Haynes Jr. (“Respondent Haynes”), a former member of the Assembly, his candidate-controlled committee, Haynes for Assembly 2004 (“Respondent Committee”), and Raymond P. Horspool Jr. (“Respondent Horspool”), treasurer of Respondent Committee.

In this matter, Respondents violated the Political Reform Act (the “Act”)¹, by failing to file two semi-annual campaign statements and a statement of termination, and by making an impermissible contribution of \$2,000 to a state committee.

This Report in Support of a Finding of Probable Cause therefore alleges that Respondents violated the Act, as follows:

19. Respondents had a duty to file a semi-annual campaign statement with the Secretary of State by the July 31, 2008, due date for the reporting period of January 1 through June 30, 2008. According to records obtained from the Secretary of State, Respondents failed to file this semi-annual campaign statement.

COUNT 1: Respondents Raymond N. Haynes Jr., Raymond P. Horspool Jr., and Haynes for Assembly 2004 failed to file required semi-annual campaign statements for the reporting period of July 1 through December 31, 2007 in violation of Government Code Section 84200, subdivision (a).

COUNT 2: Respondents Raymond N. Haynes Jr., Raymond P. Horspool Jr., and Haynes for Assembly 2004 failed to file required semi-annual campaign statements for the reporting period of January 1 through June 30, 2008, in violation of Government Code Section 84200, subdivision (a).

COUNT 3: Respondents Raymond N. Haynes Jr., Raymond P. Horspool Jr., and Haynes for Assembly 2004 failed to file a statement of termination, in violation of Government Code Section 84214.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

COUNT 4: Respondents Raymond N. Haynes Jr., Raymond P. Horspool Jr., and Haynes for Assembly 2004 improperly used funds accepted after the date of the 2004 General Election to make a contribution of \$2,000 to a state committee, in violation of Government Code Section 85316, subdivision (b).

THE RESPONDENT

This matter involves three Respondents: Respondent Raymond N. Haynes Jr., an individual residing in Foothill Ranch, California, Respondent Raymond Horspool Jr., the Treasurer of Respondent Committee and Respondent Haynes For Assembly 2004, a California campaign committee.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).² A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

²The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A–1 through A–8), and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving them with a Report in Support of a Finding of Probable Cause (the “Report”) by certified mail, on June 4, 2010. (See Certification, Exhibit A–1.) Therefore, the administrative action commenced on June 4, 2010, the date Respondent was served the Report, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondents contained a memorandum describing Probable Cause Proceedings, advising that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (See Certification, Exhibit A–2.) Respondents requested a probable cause conference and submitted a written response to the Report. (See Certification, Exhibit A–3)

B. Finding of Probable Cause

A Probable Cause Hearing was conducted on July 12, 2010. A finding of Probable Cause and Order to Prepare and Serve an Accusation was made on July 13, 2010 by Senior Commission Counsel Larry Woodlock. (See Certification, Exhibit A–3.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director or designee makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On May 27, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. (See Certification, Exhibit A-4.) In accordance with Section 11505, the Accusation and accompanying information, consisting of a cover letter, Statement to Respondent, two copies of a Notice of Defense Form, and copies of Government Code Sections 11506 through 11508, were personally served on Respondents on August 11, 2010. (See Certification, Exhibit A-5.)

Along with the Accusation, the Enforcement Division served Respondent with a “Statement to Respondent” which notified him that he could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, he would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on August 26, 2010.

Chief of Enforcement Gary Winuk sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for September 17, 2010. A copy of the Default Decision and Order, and this accompanying Exhibit 1, with attachments, was included with the letter. (See Certification, Exhibit A-6.)

SUMMARY OF THE LAW

Duties Under the Act

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Campaign Statements

The Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. This type of committee is commonly referred to as a “recipient committee.” (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Under the Act’s campaign reporting system, recipient committees are required to file certain specified campaign statements and reports. Candidates and elective officers and their controlled committees must file campaign statements with the elections official of the county in which the candidate or elected official is domiciled. (Section 84215, subd. (a).) In addition, members of the Legislature and their controlled committees must file the original campaign statement and one copy with the Secretary of State and one copy with the elections official of the county with the largest number of registered voters in the district affected. (Sections 84216, subd. (b)).

Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (a), requires all candidates and recipient committees to file semi-annual campaign statements each year no later than July 31 for the period ending June 30,

and no later than January 31 for the period ending December 31. All filing obligations continue until the recipient committee is terminated by filing a statement of termination (Form 410) with the Secretary of State and a copy with the local filing officer receiving the committee's original campaign statements. (Section 84214; Regulation 18404.)

Duty to File a Statement of Termination

Section 84214 requires committees and candidates to terminate their filing obligations pursuant to regulations adopted by the Commission, as those regulations insure that a committee or candidate will have no activity which must be disclosed pursuant to the Act subsequent to the termination. A committee terminates by filing a statement of organization declaring the committee's termination with the Secretary of State. (Reg. § 18404, subd. (c).)

Regulation 18404.1 sets forth specific rules for the termination of candidate controlled committees organized for an elective state office. Candidate controlled committees organized for elective state office for an election held on or after January 1, 2001, with no "net debts outstanding" must terminate by no later than nine months after the date that the candidate is defeated, leaves office, or the term of office for which the committee was formed ends, whichever is earliest. Candidate controlled committees with "net debts outstanding" must terminate by no later than twenty-four months after the date that the candidate is defeated, leaves office, or the term of office for which the committee was formed ends, whichever is earliest.

On or before termination of the candidate controlled committee, the campaign bank account associated with the committee must be closed. (Reg. § 18404.1, subd. (c).) No further activity, including receipt of contributions or making of payments, is allowed after the date of termination of the committee unless the committee and a campaign bank account are reopened with the consent of the Commission's Executive Director. (*Ibid.*)

Post-Election Fundraising

Section 85316 limits the uses of funds accepted by a candidate for elective state office after the date of an election. Section 85316, subdivision (a) provides that "[e]xcept as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election."

Regulation 18531.61, subdivision (d) provides that a contribution accepted pursuant to Section 85316, subdivision (a) may only be used for payment of net debts outstanding from the election. "Net debts outstanding" includes the costs of raising funds, administrative costs associated with winding down the campaign, and the total amount of unpaid debts, loans, and accrued expenditures incurred with respect to an election, less the sum of the total cash on hand to pay those debts and obligations. (Reg. § 18531.6, subd. (d).)

Section 85316, subdivision (b) provides that an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with

holding the office provided that the contributions are not expended for any contribution to any state or local committee.

Treasurer Liability

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Haynes was first elected to the California State Assembly in 1992. In 1994 and 1998, Respondent Haynes was elected to the California State Senate. In 2002, Respondent Haynes was again elected to the Assembly and successfully ran for re-election to the Assembly in the November 2, 2004, General Election. At all time relevant, Respondent Committee was Respondent Haynes' candidate-controlled committee, which was formed for the 2004 Assembly campaign, and Respondent Horspool was the treasurer of Respondent Committee.

Respondents were required to file campaign statements with the Secretary of State. Enforcement Division staff examined the Secretary of State's filing history for Respondent Committee and determined that two semi-annual campaign statements and a statement of termination were not filed with the Secretary of State for Respondent Committee. The examination of the financial records of Respondent Committee by the Enforcement Division revealed that Respondents used funds accepted after the date of the November 2, 2004, General Election to make a contribution of \$2,000 to a state committee.

Respondents had a duty to file semi-annual campaign statements with the Secretary of State by the January 31, 2008, due date, for the reporting period of July 1 through December 31, 2007, and by the July 31, 2008, due date for the reporting period of January 1 through June 30, 2008. According to records obtained from the Secretary of State, Respondents failed to file these semi-annual campaign statements despite receiving a contribution of \$3,200 and making expenditures totaling \$3,809 during the reporting periods.

By failing to file the above mentioned semi-annual campaign statements, Respondents violated Government Code Section 84200, subdivision (a).

Respondents have admitted, in writing, that they committed these violations of the Act in their written response to the Probable Cause Report prepared by the FPPC Enforcement Division.

CONCLUSION

This matter consists of four counts of violating the Act carrying a maximum administrative penalty of \$20,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The typical administrative penalty imposed against public officials for failing to file an semi-annual statement, failing to file a statement of termination and making an improper post-election contribution have been in the low to mid range of penalties.

FACTORS IN AGGRAVATION

The public harm inherent in violations of campaign reporting, where pertinent information is not disclosed, is that the public is deprived of important information, such as the sources and amounts of contributions to a campaign and the amounts expended by the campaign. Respondents Haynes and Horspool were knowledgeable of the Act having filed campaign statements, including statements of termination, for many years for multiple committees.

From May of 2006 through August of 2009, the Secretary of State sent twenty letters to Respondent Horspool regarding Respondent Committee and three other controlled committees of Respondent Haynes, which Respondent Horspool served as treasurer. These letters discussed the requirement to file semi-annual campaign statements for a committee until a statement of termination is filed for the committee. Of these letters, four specially notified Respondent Horspool that Respondent Committee's semi-annual campaign statements for the reporting periods ending December 31, 2007, and June 30, 2008, had not been filed.

FACTORS IN MITIGATION

The amount of reportable activity on the two semi-annual statements was small in amount and as a percent of the \$213,075 in contributions and \$226,812 in expenditures reported by Respondent Committee from the time it formed in 2003 through June 2007. The two semi-annual statements were post-election statements and all required preelection statements were filed for Respondent Committee. Respondents have not previously been prosecuted by the Commission. The impermissible contribution made was correctly reported on the campaign statements and was a small amount in comparison to Respondent Committee's expenditures. The investigation found no intent to conceal the activity.

The Respondents filed the delinquent statements after the Probable Cause hearing was conducted in July, 2010.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the penalty of Two Thousand Dollars (\$2,000) per count, for a total penalty of Eight Thousand Dollars (\$8,000).